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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Alexander Nikolayev,)	Civil No. C-07-04362-WHA
)	
Plaintiff,)	PETITION FOR HEARING ON
)	NATURALIZATION APPLICATION
vs.)	PURSUANT TO 8 USC SECTION 1447(b)
)	
Department of Homeland Security, Michael)	USCIS Case No.: A 075 722 863
Chertoff, Secretary; United States)	
Citizenship and Immigration Services,)	
Emilio T. Gonzalez, Director; United States)	
Citizenship and Immigration Services,)	
Rosemary Melville, District Director; US)	
Attorney General, Alberto Gonzales;)	
Federal Bureau of Investigation, Robert S.)	
Mueller, III, Director)	
)	
)	
Defendants.)	

Plaintiff, by his attorneys, complaining of Defendants, alleges as follows:

1. Plaintiff is an individual and resident of the United States who resides in the jurisdiction of this Court. Plaintiff's claim to naturalization arises under 8 United States Code (hereinafter "USC") Section 1421.
2. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security (hereinafter "DHS"). This action is brought against him in his official capacity. He is

generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of DHS. 8 U.S.C. §1103(a); 8 C.F.R. §2.1.

3. Defendant Emilio T. Gonzalez is the Director of the United States Citizenship and Immigration Services (hereinafter “USCIS”), an agency within DHS to whom the Secretary’s authority has in part been delegated and is subject to the Secretary’s supervision. Defendant Director is generally charged with the overall administration of benefits and immigration services.
4. Defendant Rosemary Melville is the Director of the San Francisco District of USCIS. She is generally charged with supervisory authority over all operations of USCIS within her District, including the San Francisco and San Jose Field Offices, with specific exceptions not relevant here. 8 C.F.R. §100.2(d)(2)(ii).
5. Defendant Alberto Gonzales is the Attorney General of the United States. He is the head of the U.S. Department of Justice, which includes the Federal Bureau of Investigation (FBI).
6. Defendant Robert S. Mueller, III, is the Director of the FBI, the law enforcement agency that conducts security clearances for other U.S. government agencies, such as the Department of Homeland Security. As it will be shown, Defendant has failed to complete the security clearances on Plaintiff’s case.
7. All Defendants are sued herein in their official capacities. Defendants from DHS and USCIS are responsible for the grant or denial of naturalization applications filed in the San Francisco USCIS district pursuant to 8 USC Sections 1421, 1427 and 8 Code of Federal Regulations (hereinafter “CFR”) Sections 2.1, 103.1(b), 310.2, 316.3. Defendants from the Department of Justice are responsible for providing access to criminal history record information.

1 8. The Court has jurisdiction of this action pursuant to 8 USC Sections 1447(b) and 2201.

2 9. On or about January 17, 2006, Plaintiff filed his application for naturalization with
3 USCIS.

4 10. On or about September 25, 2006, Defendants and their designated agent examined
5 Plaintiff on his application at the Oakland sub-office of the USCIS San Francisco Field
6 Office.

7 11. At his examination, Defendants' agent told Plaintiff that he passed his examination but a
8 decision could not yet be made on the application.

9 12. Plaintiff has inquired about the status of his naturalization application through USCIS.

10 The inquiry response confirmed that his application is pending due to security checks.

11 On July 20, 2007, Plaintiff's counsel sent a letter to the District Director and indicated
12 that Plaintiff would file this Petition unless his case was adjudicated within 30 days.

13 USCIS responded in writing, reiterating that the background checks remain pending.

14 13. Plaintiff understands the necessity of background checks, but he was examined almost
15 one year ago and Defendants have made no decision on Plaintiff's application.

16 Defendants have been unable to provide any estimate as to when they will adjudicate the
17 application and most likely would allege that they cannot adjudicate it until the

18 background checks have been completed. It is Plaintiff's position that a year is more
19 than a reasonable amount of time in which to conduct background checks in this case.

20 The FBI found no records relating to him when Plaintiff requested a copy of his FBI
21 file.

22 14. The Defendants' failure to make a determination of Plaintiff's application within 120
23 days after his examination allows Plaintiff to bring the matter to this Court for a hearing
24 pursuant to 8 USC Section 1447(b).
25

1 15. Plaintiff desires a judicial determination of his naturalization application and a
2 declaration that he is entitled to be naturalized as a citizen of the United States.

3 WHEREFORE, Plaintiff prays that:

- 4 1. The Court will hear Plaintiff's case and render a declaratory judgment that he is entitled
5 to be naturalized, and
6 2. The Court grants such further relief as may be just, lawful and equitable to the premises.

7 Dated this 20th day of August, 2007

8 /s/

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